

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JULIEANNE K. JONS and U.S. POSTAL SERVICE,  
POST OFFICE, Sioux Falls, S.D.

*Docket No. 96-2219; Submitted on the Record;  
Issued June 15, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,  
BRADLEY T. KNOTT

The issue is whether appellant has met her burden of proof in establishing that she sustained an injury to her hip and lower back during the performance of her duties on December 22, 1994.

On February 12, 1996 appellant, then a 40-year-old former casual carrier and seasonal helper filed a notice of traumatic injury and claim for continuation of pay/compensation Form CA-1, alleging that the injury to her hip and lower back was employment related. Appellant stated that she was delivering a package to a resident in an apartment complex when she slipped on freezing ice and fell on the sidewalk. Appellant stated that she received a large bump on the back of her head and injured her right backside area, *i.e.*, lower back, hip and buttock. The record shows that appellant lost no time from work following the alleged incident and did not seek medical treatment until January 1995. The employing establishment has controverted appellant's claim for benefits.

In a March 7, 1996 letter, the Office of Workers' Compensation Programs advised appellant of the type of factual and medical evidence needed to establish her claim and requested that she submit such evidence. The Office particularly requested that appellant submit a physician's reasoned opinions addressing the relationship of her claimed condition and specific employment factors. Appellant was allotted thirty days within which to submit the requested evidence.

In response, appellant submitted her own statement regarding the alleged incident and verification of treatment and progress notes dated April 4 and 21, 1995 from her attending physical therapist.

By decision dated April 17, 1996, the Office denied appellant's claim for compensation benefits on the grounds that the evidence of record failed to support the fact of an injury in this case. In an accompanying memorandum, the Office noted that appellant was advised of the

deficiency in her claim on March 7, 1996, and afforded an opportunity to provide supportive evidence; however, no medical evidence of any kind was submitted to support the fact that appellant sustained an injury on December 22, 1994, as alleged.

The Board finds that appellant has not met her burden of proof in establishing that she sustained an injury to her hip and lower back while in the performance of duty on December 22, 1994, as alleged.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing that the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>2</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>3</sup>

In order to determine whether a federal employee has sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.<sup>4</sup>

The second component of fact of injury is whether the employment incidents cause a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event, incident or exposure, the employee must submit rationalized medical opinion, based on a complete factual and medical background, supporting such a causal relationship.<sup>5</sup>

In the instant case, it is not disputed that appellant's job as a seasonal casual carrier, required her to deliver packages of mail in all types of weather to residents in apartment complex buildings, during the course of her federal employment duties. Consequently, the Board finds that the alleged employment events occurred as appellant was required to deliver packages of mail during all types of weather to residents in various apartment buildings.

Appellant, however, has submitted no medical evidence establishing that her lower back condition is causally related to the employment factors or conditions. The Office found that the

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Joe Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> *David J. Overfield*, 42 ECAB 718 (1991); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>4</sup> *Elaine Pendleton*, *supra* note 2.

<sup>5</sup> *Kathryn Haggerty*, 45 ECAB 383 (1994); *see also* 20 C.F.R. § 10.110(a).

evidence of record failed to support the fact of an injury since the only medical evidence submitted to support appellant's claim was a physical therapist treatment of verification and progress notes dated April 4, and 21, 1995. A physical therapist is not a "physician" within the meaning of the Act and is therefore, not competent to give a medical opinion.<sup>6</sup> Appellant was advised of the deficiencies in her claim on March 7, 1996, and afforded the opportunity to provide supportive evidence, however, no medical evidence addressing whether any medical condition arose out of the incident of December 22, 1994, was submitted. Appellant merely stated that she sustained an injury to her hip and lower back during the December 22, 1994, incident.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship. Causal relationship must be established by rationalized medical opinion evidence. Thus, as appellant failed to provide rationalized medical evidence establishing that she sustained an injury as a result of the December 22, 1994 employment incident, the Office properly denied appellant's claim for compensation.<sup>7</sup>

The decision of the Office of Workers' Compensation Programs dated April 17, 1996 is affirmed.

Dated, Washington, D.C.  
June 15, 1998

Michael J. Walsh  
Chairman

George E. Rivers  
Member

Bradley T. Knott

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<sup>6</sup> 5 U.S.C. § 8101(2) states in part: "physician's includes surgeons, podiatrists, dentists, clinical psychologists, optometrist, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law."

<sup>7</sup> See *Robert J. Krstyen*, 44 ECAB 227 (1992) (finding that appellant failed to submit sufficient medical evidence to establish that specific work factors caused or aggravated his back condition).

Alternate Member